IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS EL DORADO DIVISION

KENNETH MODICA PLAINTIFF

V. CASE NO. 05-CV-1087

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION

DEFENDANT

AMENDED JUDGMENT

Before the Court is the Report and Recommendation filed December 3, 2010, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 76). Judge Bryant recommends that Defendant's Motion for Summary Judgment (Doc. 50) be granted in its entirety, that judgment be entered against Plaintiff, and that the case be dismissed with prejudice. Plaintiff has responded with timely objections. (Doc. 77). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.¹

Plaintiff brought suit against Defendant alleging a breach of Defendant's duty of fair representation in the handling of Plaintiff's grievance following his termination from El Dorado Chemical Company. Judge Bryant concluded that Plaintiff failed to establish that his discharge was in violation of the collective bargaining agreement between him and El Dorado Chemical Company. For Plaintiff to prevail in this action, he must not only show that Defendant breached its duty of fair

¹This Amended Judgment replaces the Judgment entered on January 5, 2011. (Doc. 78). The Court amends its Judgment to correct a clerical error.

representation but also that his discharge was in violation of the collective bargaining agreement.

Hines v. Anchor Motor Freight, 424 U.S. 554, 5 70 (1976). Plaintiff argues that there are genuine

issues of material fact as to whether the collective bargaining agreement was violated. Viewing the

facts in the light most favorable to Plaintiff and after reviewing Plaintiff's supporting affidavits, the

Court finds that the affidavits do not raise a genuine issue as to any material fact that would preclude

summary judgment. Plaintiff fails to offer any proof that would allow a jury to find that his

termination was in violation of the collective bargaining agreement. Accordingly, the Court adopts

the Report and Recommendation of Judge Bryant. It is hereby ordered that Defendant's Motion for

Summary Judgment (Doc. 50) is GRANTED and Plaintiff's claims are DISMISSED WITH

PREJUDICE.

IT IS SO ORDERED, this 6th day of January, 2011.

/s/ Harry F. Barnes

Hon. Harry F. Barnes

United States District Judge

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